

120 FERC ¶ 61,275
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Giant Pipeline Company and Giant
Industries Arizona, Inc.

Docket No. OR07-12-000

ORDER ON TEMPORARY WAIVER OF TARIFF FILING AND REPORTING
REQUIREMENTS

(Issued September 25, 2007)

1. On July 2, 2007, Giant Pipeline Company (GPL) and Giant Industries Arizona, Inc. (GIA) filed a request for temporary waiver of the tariff filing and reporting requirements contained in Sections 6 and 20 of the Interstate Commerce Act (ICA)¹ applicable to interstate common carrier pipelines. Contemporaneously, GPL and GIA filed tariffs so that they may commence transportation of crude oil in interstate commerce on or after July 4, 2007. By Commission order issued August 1, 2007, the tariff filings were accepted and suspended and allowed to become effective July 4, 2007, subject to the outcome of this proceeding.² To the extent that the Commission grants the waivers requested, GPL and GIA would withdraw those tariffs. Upon consideration, the Commission grants waiver of the tariff filing and reporting requirements contained in Sections 6 and 20 of the ICA as requested by GPL and GIA, subject to conditions. GPL and GIA shall cancel the tariffs currently in effect for such movements in accordance with the provisions of Sections 341.4(b) and 341.5 of the Commission's regulations. (18 C.F.R. §§ 341.4(b) and 341.5 (2007)).

¹ 49 App. U.S.C. §§ 6 and 20 (1988).

² *Giant Industries Arizona, Inc. and Giant Pipeline Company*, 120 FERC ¶ 61,126 (2007).

Request for Waiver

2. GPL and GIA state that they are owners and operators of pipeline systems in the State of New Mexico that will be used to move crude oil in interstate commerce. They further state that they are currently indirect, wholly-owned subsidiaries of Western Refining, Inc., an independent crude oil refiner and marketer of refined products operating primarily in Arizona, New Mexico and West Texas. GPL states that it owns and will operate the TexNew Mex Pipeline, which consists of 423 miles of 16-inch diameter pipeline that extends from Jal, New Mexico northwesterly to Bisti, New Mexico. Historically, this line flowed southeasterly and was used exclusively to serve the Bloomfield and Ciniza refineries, in the vicinity of Bisti. It has been idle for some 7 years. GPL intends to reverse the flow of the line so that it will flow northwesterly from Lynch, New Mexico, northwest of Jal, to carry crude destined for the Bloomfield and Ciniza refineries located near Bisti, both of which are operated by GIA. The Bloomfield refinery is owned by a subsidiary of Western Refining, Inc. The Ciniza refinery is owned by GIA.

3. In addition to the TexNew Mex Pipeline, GPL states that it has entered into an agreement under which it will lease 15,000 barrels per day of capacity on a pipeline owned and operated by TEPPCO Crude Pipeline, L.P. (TEPPCO) extending from Midland, Texas to Lynch, New Mexico. GPL states that it intends to operate the leased capacity in conjunction with its TexNew Mex Pipeline in order to provide seamless transportation of its own crude oil from Midland, Texas northward to the Star Lake and Bisti delivery points on the TexNew Mex Pipeline. The physical flow of oil will thus move from the producing fields in Texas through the TEPPCO line through Hobbs, New Mexico to tankage at Lynch, New Mexico, where it will be stored for 2 or 3 days before continuing northwestward on the TexNew Mex Pipeline.³ From there, it will flow either into the West Leg of GIA's 6-inch diameter Ciniza pipeline for transportation to the Ciniza refinery, or the East Leg of GIA's 6-inch diameter Ciniza pipeline for transportation to the Bloomfield refinery.⁴

³ Therefore, asserts GPL, there will be no continuous flow of crude from Midland, Texas to Star Lake or Bisti.

⁴ GPL also owns a segment of pipeline extending south from Lynch to Jal, New Mexico, which it will lease to TEPPCO, who will then operate this segment of line under its own tariff. The parties state that neither GPL nor any affiliate of GPL intends to use this segment of pipeline except during emergencies when either the Ciniza or Bloomfield refineries is out of service. The parties state that any such movements would occur only during emergency situations and not during routine scheduled maintenance at those refineries. The parties further state that such shipments would be under the TEPPCO tariff or under tariffs to be filed by GPL in advance of such shipments.

4. GPL and GIA state that the crude transported on the TexNew Mex Pipeline and on the capacity they lease from TEPPCO will consist of Texas production received at Midland and New Mexico production coming in by tanker truck at Lynch, New Mexico. It is expected that all crude carried by GPL and GIA will be crude destined for the Bloomfield and Ciniza refineries. There will be no other outlets for such crude. There are no other refineries along the route and GPL and GIA will have no other interconnections with pipelines downstream of Lynch.

5. GPL and GIA further state that it is anticipated that such crude will be owned by either Western Refining, Inc., the parent of both GPL and GIA, or a direct or indirect, wholly-owned subsidiary of Western Refining, Inc. They state that they have not received any requests for transportation service from any unaffiliated entity, and since the destination points are the affiliated refineries at Ciniza and Bisti, both of which are owned by direct or indirect wholly-owned subsidiaries of Western Refining, Inc., the parent company of GPL and GIA, they do not expect to receive any requests for transportation from third parties.

6. GPL and GIA therefore request that the Commission grant them temporary waivers of the filing requirements under Sections 6 and 20 of the ICA and the Commission's regulations promulgated thereunder, subject to their continuing obligation to maintain their books and records in accordance with the Commission's Uniform System of Accounts and timely notify the Commission of any material change in the facts relied upon to grant such waivers. GPL further states that its waiver could be made subject to the express requirement that, in the event it (i) receives a request from a non-affiliated shipper for transportation over its leased space from Midland, Texas to Lynch, New Mexico, or (ii) TEPPCO's space from Midland to Lynch becomes subject to prorationing, GPL shall file a tariff with the Commission for movements over its leased capacity from Midland to Lynch. In the alternative, GPL and GIA request that the Commission grant them temporary waivers of the tariff filing and reporting requirements as to all movements downstream of Lynch, New Mexico (*i.e.*, all movements over the pipeline facilities actually owned by GPL and GIA), and grant them waiver of the reporting requirements as to movements over the leased capacity from Midland, Texas to Lynch, New Mexico.

Notice and Intervention

7. GPL/GIA's request for temporary waiver was noticed by the Commission on July 19, 2007. Persons desiring to intervene or protest this filing were accorded an opportunity to do so pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). No requests for intervention or protests were received.

Discussion

8. The Commission has granted interstate pipelines temporary waivers of the tariff filing and reporting requirements where the circumstances showed these requirements were not necessary to protect anyone because the pipeline was not being used, or was not likely to be used, for the transportation of oil for an unaffiliated third party. The Commission has granted waivers to pipelines where, as here, all of the oil to be carried is owned by the pipeline or an affiliate; no third party has requested, or is likely to request, transportation service over the pipeline; and there is no opposition to the waiver request.⁵

9. Upon consideration of the facts contained in the request as filed by GPL and GIA, the Commission will grant the temporary waivers requested by GPL and GIA, subject to the conditions that they maintain their books and records in accordance with the Uniform System of Accounts, and timely notify the Commission of any material change in the facts of their operations as stated in the request. Further, such grant is conditioned upon GPL filing a tariff with the Commission for movements over its leased capacity from Midland, Texas to Lynch, New Mexico in the event it receives a request for transportation over such leased capacity from an unaffiliated shipper, or TEPPCO's space from Midland, Texas to Lynch, New Mexico becomes subject to prorationing.

The Commission orders:

The temporary waivers requested by GPL and GIA are granted, subject to the conditions contained in the body of this order. The tariff filings subject to suspension in Docket Nos. IS07-387-000 and IS07-388-000 shall be cancelled as provided in Part 341 of the Commission's regulations.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵ See, e.g., *Sinclair Oil Corp.*, 4 FERC ¶ 62,026 (1978); *Hunt Refining Co. and East Mississippi Pipeline Co.*, 70 FERC ¶ 61,035 (1995); *Ciniza Pipe Line Inc.*, 73 FERC ¶ 61,377 (1995); *Enbridge Pipelines (NE Texas Liquid) L.P.*, 110 FERC ¶ 61,159 (2005); *Enbridge Pipelines (NE Texas Liquid) L.P.*, 117 FERC ¶ 61,046 (2006).